



House of Representatives

General Assembly

File No. 298

February Session, 2002

Substitute House Bill No. 5609

House of Representatives, April 3, 2002

The Committee on Environment reported through REP. STRATTON of the 17th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) Notwithstanding any other
2 provision of the general statutes, no state agency, including, but not
3 limited to, the Department of Environmental Protection and the
4 Connecticut Siting Council, shall consider or render a final decision for
5 any applications relating to electric power line crossings or gas
6 pipeline crossings of Long Island Sound including, but not limited to,
7 electrical power line or gas pipeline applications that are pending or
8 received after the effective date of this section for a period of one year
9 after the effective date of this section. During such twelve-month
10 moratorium on applications relating to crossings of Long Island
11 Sound, the Institute of Sustainable Energy at the Eastern Connecticut
12 State University shall convene a working group of all interested parties
13 to establish priorities and develop strategies for minimizing the
14 number and geographical distributions of such crossings of Long
15 Island Sound and shall make recommendations to the General

16 Assembly concerning such strategy.

17 Sec. 2. (NEW) (*Effective from passage*) Not later than one year from
18 the effective date of this section, a comprehensive environmental
19 assessment and plan shall be completed under the direction of the
20 Institute for Sustainable Energy in conjunction with the assistance of a
21 representative of: (1) The Department of Environmental Protection; (2)
22 the aquaculture division of the Department of Agriculture; (3) the
23 National Marine Fisheries; (4) Save the Sound, Inc.; (5) the Connecticut
24 Fund for the Environment, Inc.; and (6) no more than three
25 representatives each from the electrical cable power industry and the
26 gas pipeline industry. Nothing in this section shall prohibit the
27 participation of other persons in the development of the
28 comprehensive environmental assessment and plan. Such assessment
29 and plan shall include, but not be limited to, the following: (A) An
30 assessment of the present status, future potential and environmental
31 impacts of proposed methods of providing power to Long Island that
32 do not require the laying of a power line or cable within Long Island
33 Sound; (B) an evaluation of methods to minimize the numbers and
34 impacts of electric power line crossings and gas pipeline crossings
35 within Long Island Sound; (C) an identification of those resources in
36 Long Island Sound that are ecologically sensitive including, but not
37 limited to, areas of environmental contamination that should be
38 avoided; (D) recommendations for providing for regional energy
39 needs while protecting Long Island Sound to the maximum extent
40 possible; and (E) recommendations on natural resource performance
41 bond levels to reimburse the state in the event that future electric
42 power line crossings or gas pipeline crossings substantially damage
43 the public trust in the natural resources of Long Island Sound.

44 Sec. 3. (NEW) (*Effective from passage*) (a) Any application for an
45 electric power line or gas pipeline crossing of Long Island Sound that
46 is considered by either the Department of Environmental Protection or
47 the Connecticut Siting Council after the creation of the comprehensive
48 environmental assessment and plan, described in section 2 of this act,
49 shall additionally be evaluated for such application's: (1) Likelihood to

50 impair the public trust in Long Island Sound based on the information
51 contained in the comprehensive environmental assessment and plan;
52 and (2) the extent to which the application is consistent with the
53 recommendations of the comprehensive environmental assessment
54 and plan described in section 2 of this act.

55 (b) Notwithstanding any provision of the general statutes or any
56 approval received pursuant to any other provision of law prior to the
57 effective date of this section, no electrical power line crossing shall be
58 constructed within Long Island Sound until the comprehensive
59 environmental assessment and plan described in section 2 of this act is
60 completed and such project has received an expedited review as
61 described in section 4 of this act. Nothing in this subsection shall be
62 construed to affect projects in the corridor of Long Island Sound
63 presently leased by Northeast Utilities.

64 Sec. 4. (NEW) (*Effective from passage*) Any electrical power line
65 project approved by any state agency prior to the effective date of this
66 section and delayed by the provisions of subsection (b) of section 3 of
67 this act, shall, after the completion of the comprehensive
68 environmental assessment and plan described in section 2 of this act,
69 receive an expedited review by each state agency that approved such
70 project. Such expedited review to approve, deny or condition the
71 approval of such project shall be limited to a determination by each
72 such state agency of the following: (1) The consistency of such project
73 with the comprehensive environmental assessment and plan described
74 in section 2 of this act; and (2) whether such project is reasonably likely
75 to impair the public trust in the natural resources of Long Island
76 Sound based on information contained in the comprehensive
77 environmental assessment and plan. If a reviewing state agency does
78 not issue a determination within ninety days of the beginning of such
79 expedited review, such project shall be deemed approved.

80 Sec. 5. (NEW) (*Effective from passage*) Notwithstanding any provision
81 of the general statutes, the Connecticut Siting Council, within fifteen
82 days of the effective date of this section shall submit the state's

83 advisory opinion to the Federal Energy Regulatory Commission
84 requesting that, on behalf of the state, the Federal Energy Regulatory
85 Commission not approve any individual new electric power line
86 crossing or gas pipeline crossings until the comprehensive
87 environmental assessment and plan described in section 2 of this act is
88 completed and that the Federal Energy Regulatory Commission avoid
89 environmental damage to Long Island Sound to the greatest extent
90 possible when licensing any future gas pipelines by considering the
91 recommendations contained in the comprehensive environmental
92 assessment and plan described in section 2 of this act.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>from passage</i>
Sec. 5	<i>from passage</i>

Statement of Legislative Commissioners:

Throughout the act "crossings", "power line project" and "energy crossings" were changed to "electric power line crossings or gas pipeline crossings" for consistency with other provisions of the act.

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Cost	CT State Univ.	150,000 - 200,000	-	-
GF - Cost	Siting Council, CT	Minimal	Minimal	Minimal
GF - Cost	Environmental Protection, Dept.	Minimal	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

In addition to establishing a one-year moratorium on the building of a gas pipeline or electric power line across Long Island Sound, the bill requires the Institute of Sustainable Energy at Eastern Connecticut State University to conduct a comprehensive environmental assessment of ways to provide power to Long Island. The components of the assessment are specified in the bill and while certain costs related to staffing, the production of a report, and miscellaneous research costs can be absorbed within existing resources; there are requirements in the bill for which the Institute does not have the necessary expertise.

Consequently, consultants would be required to perform tasks such as identifying alternatives to Sound crossing; evaluating ecologically sensitive areas of the Sound and reviewing various risk, financial and marketing assessments. One-time consultant expenses are estimated at \$150,000 - \$200,000. It is anticipated that the Departments of Agriculture and Environmental Protection (DEP) and the Connecticut Siting Council would provide assistance to the Institute within normal budgetary resources. Finally, the reviews of certain permits by DEP

following the completed assessment are also anticipated to be handled within normal budgetary resources.

OLR Bill Analysis

sHB 5609

AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND**SUMMARY:**

This bill establishes a one-year moratorium, effective upon passage, on consideration or final approval of applications (including pending applications) to build a gas pipeline or electric power line across Long Island Sound. It requires, by the end of the one-year period, the preparation and completion of a comprehensive environmental assessment and plan ("assessment") of ways to provide power to Long Island without laying such lines or cables in the Sound, or alternatively, of restricting their environmental impact.

It prohibits the construction of electrical power lines across the Sound until completion of the assessment and the necessary expedited reviews, which the bill requires. It exempts from this provision projects in the Long Island Sound corridor presently leased by Northeast Utilities.

The bill requires each state agency that has approved an application for such cables or pipelines before the bill's effective date to conduct an expedited review process to determine if the project is (1) consistent with the assessment's recommendations and (2) reasonably likely to impair the public trust in the Sound's natural resources, based on information the assessment contains. It requires the Department of Environmental Protection (DEP) and the Connecticut Siting Council, to make similar determinations when reviewing applications filed after the assessment's completion.

The bill requires the Institute of Sustainable Energy and other interested parties to prepare the assessment. They also must (1) establish priorities and strategies to restrict the number of Sound crossings and their geographical distribution and (2) make recommendations to the legislature.

The bill requires the Siting Council to submit an "advisory opinion" to

the Federal Energy Regulatory Commission (FERC) within 15 days of the act's passage. This is a request that FERC (1) not approve any new gas pipeline until the assessment is completed and (2) consider the assessment's recommendations and avoid environmental damage to the Sound to the greatest extent possible when licensing future gas pipelines.

EFFECTIVE DATE: Upon passage

ENVIRONMENTAL ASSESSMENT AND PLAN

The Institute for Sustainable Energy must develop the assessment in conjunction with one representative each from (1) DEP; (2) the agriculture department's aquaculture division; (3) the National Marine Fisheries Service; (4) Save the Sound, Inc.; and (5) the Connecticut Fund for the Environment, and no more than three representatives each from the electrical cable power and gas pipeline industries. Other interested parties may also participate.

The assessment and plan must:

1. assess the present status, future potential, and environmental impact of proposed methods of providing power to Long Island that do not require the laying of power lines or cables within the Sound;
2. evaluate ways to limit the number and impact of energy crossings within the Sound;
3. identify ecologically sensitive resources within the Sound, including areas of environmental contamination to be avoided;
4. recommend ways to supply regional energy needs while protecting the Sound to the maximum extent possible; and
5. recommend bond levels sufficient to reimburse the state in the event future power crossings damage the public trust in the Sound's natural resources.

EXPEDITED REVIEW

Any state agency that approved a project before the bill's effective date must expedite the review for purposes of approving, denying, or conditioning the approval. The review must determine only if the project is (1) consistent with the assessment and (2) is reasonably likely to impair the public trust in the Sound's natural resources, based on

information the assessment contains. A project is deemed approved if the reviewing agency does not issue a determination within 90 days of starting the review.

RELATED CASE LAW

The Connecticut Supreme Court held in *Poneleit v. Dudas* that the state, through its police powers can regulate private property to promote the health, welfare, or safety of citizens, even if the regulations restrict an individual's property rights (141 Conn. 413 (1954)). The Court held in *Bernhard v. Planning and Zoning Commission* that municipalities can adopt moratoria under their zoning powers (194 Conn. 152 (1984)). The Court found that the moratorium in *Bernhard* was not a taking because it was reasonably limited in scope and time.

These cases did not address other issues that may be relevant to this bill's constitutionality, such as interstate commerce.

BACKGROUND

Federal Energy Regulatory Commission

This commission is an independent agency within the U.S. Department of Energy that regulates the transmission and sale of natural gas for resale and the transmission and wholesale sales of electricity in interstate commerce. It is not directly involved in siting transmission facilities.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 28 Nay 0